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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,387	01/12/2001	Michael Roger Cane	14409-9006-00	2484
23409	7590	04/02/2004	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			SMITH, RUTH S	
			ART UNIT	PAPER NUMBER
			3737	

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/760,387

Applicant(s)

CANE ET AL.

Examiner

Ruth S Smith

Art Unit

3737

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: The proposed changes to the claims raises new issues.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: 13-34 and 64-67.

Claim(s) objected to: _____.

Claim(s) rejected: 1,5-12,35,42-50,52,58 and 59.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.


Ruth S Smith
Primary Examiner
Art Unit: 3737

LISTING OF THE CLAIMS:

1. (Currently Amended) A method of monitoring the presence of one or more chromophores in a sample of biological tissue, which method comprises;
illuminating an area of such tissue sample by projecting light from a light source;
receiving light remitted by the illuminated area of tissue at a photo-receptor;
spectroscopically analyzing the remitted light ~~to generate data indicative of the remitted light;~~
analysing the difference between incident light and the remitted light and obtaining data indicative of the analysis;
~~using a portion of the data generated in analyzing the remitted light to normalize a further portion of the data to define a parameter of the tissue;~~
normalizing the data to a standard value of that parameter using a predictive mathematical model of the optical properties of the biological tissue; and
comparing variations in the intensity and spectral characteristics of the ~~remitted light of the normalized further portion of data with respect to the intensity and spectral characteristics of the projected light with~~ data representing a datum sample of intensity and spectral characteristics of light remitted by a sample of known structure.

Claims 2-4 (Canceled)

do not
enter
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